

SECOND REGULAR SESSION

SENATE BILL NO. 1098

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS BRAY AND ENGLER.

Read 1st time February 7, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

5010S.011

AN ACT

To repeal sections 383.015, 383.016, 383.020, 383.035, and 383.206, RSMo, and to enact in lieu thereof six new sections relating to medical malpractice insurance.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 383.015, 383.016, 383.020, 383.035, and 383.206, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 383.015, 383.016, 383.020, 383.035, 383.036, and 383.206, to read as follows:

383.015. 1. Any such group of persons desiring to provide malpractice insurance or indemnification for its members shall pay a license fee of one hundred dollars and shall file articles of association, **and a plan of operation or a feasibility study**, with the director [of insurance]. The articles shall be filed in accordance with the provisions of sections 375.201 to 375.236, RSMo, and shall also include the names of persons initially associated, the method by which other persons may be admitted to the association as members, the purposes for which organized, the amount of the initial assessment which has been paid into the association, the method of assessment thereafter, and the maximum amount of any assessment which the association may make against any member. The articles of association shall provide for bylaws and for the amendment of the articles of association and bylaws.

2. Each association shall designate and maintain a registered agent within this state, and service upon the agent shall be service upon the association and each of its members.

3. The articles of association shall be accompanied by a copy of the initial

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 bylaws of the association. The bylaws shall provide for a governing body for the
18 association, a manner of election thereof, the manner in which assessments will
19 be made, the specific kinds of insurance or indemnification which will be offered,
20 the classes of membership which will be offered, and may provide that
21 assessments of various amounts for particular classes of membership may be
22 made. All assessments shall be uniform within classes. The bylaws may provide
23 for the transfer of risks to other insurance companies or for reinsurance.

24 **4. The plan of operation or feasibility study shall consist of an**
25 **analysis which presents the expected activities and results of the**
26 **association including, at a minimum:**

27 **(1) The coverages, deductibles, coverage limits, rates, and rating**
28 **classification systems for the insurance the association intends to offer;**

29 **(2) Historical and expected loss experience of the proposed**
30 **members and Missouri experience of similar exposures to the extent**
31 **that this experience is reasonably available;**

32 **(3) Pro forma financial statements and projections;**

33 **(4) Appropriate opinions by a qualified, independent casualty**
34 **actuary, including a determination of minimum premium or**
35 **participation levels required to commence operations and to prevent**
36 **a hazardous financial condition;**

37 **(5) Identification of management, underwriting and claims**
38 **procedures, marketing methods, managerial oversight methods,**
39 **investment policies and reinsurance agreements; and**

40 **(6) Such other matters as may be prescribed by the director by**
41 **rule.**

383.016. The articles of association and the bylaws of any association
2 created under the provisions of sections 383.010 to 383.040 shall:

3 **(1) Specify and define the types of assessments, including but not limited**
4 **to initial, regular, operating, special, any other assessment to cover losses and**
5 **expenses incurred in the operation of the association, or any other assessment to**
6 **maintain or restore the association's assets, solvency, or surplus;**

7 **(2) Specify by type of assessment the assessments that shall apply to**
8 **members, former members, or both members and former members of the**
9 **association; and**

10 **(3) With respect to any assessment to cover losses and expenses incurred**
11 **in the operation of the association and any assessment to maintain or restore the**
12 **association's assets, solvency, or surplus specify:**

13 (a) The exact method and criteria by which the amounts of each type of
14 assessment are to be determined;

15 (b) The time in which the assessments must be paid;

16 (c) That such assessments shall be made without limitation as to
17 frequency;

18 (d) The maximum amount of any single assessment; and

19 (e) [How] **That** such assessments apply to members and former members.

383.020. **1.** The director [of insurance] shall, within thirty days after any
2 such articles of association are filed with him, determine if the proposed
3 association meets the requirements of sections 383.010 to 383.040, and if it does,
4 shall issue a license to the association authorizing it to do business for a one-year
5 period.

6 **2. The director shall not issue or renew a license to any such**
7 **association unless it:**

8 **(1) Has and maintains a policyholder's surplus of at least one**
9 **hundred thousand dollars; and**

10 **(2) Has transferred to and deposited with the director for the**
11 **security of its policyholders and creditors, cash or bonds, or treasury**
12 **notes issued or guaranteed by the United States, or bonds of the state**
13 **of Missouri, any school district of this state, or any political subdivision**
14 **of this state, to be received at a rate not above their par value nor**
15 **above their current market value, in the amount of one hundred**
16 **thousand dollars.**

383.035. **1.** Any association licensed pursuant to the provisions of sections
2 383.010 to 383.040 shall be subject to the provisions of the following provisions
3 of the revised statutes of Missouri:

4 (1) Sections 374.010, 374.040, 374.046 to 374.049, 374.110, 374.115,
5 374.122, 374.170, 374.190, 374.210, 374.215, 374.216, 374.230, 374.240, 374.250
6 and 374.280, RSMo, relating to the general authority of the director [of the
7 department of insurance];

8 (2) Sections 375.022, 375.031, 375.033, 375.035, 375.037 and 375.039,
9 RSMo, relating to dealings with licensed agents and brokers;

10 (3) Sections 375.041 and 379.105, RSMo, relating to annual statements;

11 (4) Section 375.163, RSMo, relating to the competence of managing
12 officers;

13 (5) Section 375.246, RSMo, relating to reinsurance requirements, except
14 that no association shall be required to maintain reinsurance, and for insurance

15 issued to members who joined the association on or before January 1, 1993, an
16 association shall be allowed credit, as an asset or as a deduction from liability,
17 for reinsurance which is payable to the ceding association's insured by the
18 assuming insurer on the basis of the liability of the ceding association under
19 contracts reinsured without diminution because of the insolvency of the ceding
20 association;

21 (6) Section 375.390, RSMo, relating to the use of funds by officers for
22 private gain;

23 (7) Section 375.445, RSMo, relating to insurers operating fraudulently;

24 (8) Section 379.080, RSMo, relating to permissible investments, except
25 that limitations in such section shall apply only to assets equal to such positive
26 surplus as is actually maintained by the association;

27 (9) Section 379.102, RSMo, relating to the maintenance of unearned
28 premium and loss reserves as liabilities, except that any such loss reserves may
29 be discounted in accordance with reasonable actuarial assumptions;

30 (10) Sections 383.100 to 383.125 relating to reports from medical
31 malpractice insurers;

32 (11) Sections 383.200 to 383.209 and 383.225 relating to notification, data
33 reporting, and rating requirements.

34 2. Any association licensed pursuant to the provisions of sections 383.010
35 to 383.040 shall file with its annual statement a certification by a fellow or an
36 associate of the Casualty Actuarial Society. Such certification shall conform to
37 the National Association of Insurance Commissioners annual statement
38 instructions unless otherwise provided by the director.

39 3. The director shall have authority in accordance with section 374.045,
40 RSMo, to make all reasonable rules and regulations to accomplish the purpose of
41 sections 383.010 to 383.040, including the extent to which insurance provided by
42 an association may be extended to provide payment to a covered person resulting
43 from a specific illness possessed by such covered person[; except that no rule or
44 regulation may place limitations or restrictions on the amount of premium an
45 association may write or on the amount of insurance or limit of liability an
46 association may provide].

47 4. Other than as provided in this section, no other insurance law of the
48 state of Missouri shall apply to an association licensed pursuant to the provisions
49 of this chapter, unless such law shall expressly state it is applicable to such
50 associations.

51 5. If, after its [second] **first** full calendar year of operation, any

52 association licensed under the provisions of sections 383.010 to 383.040 shall [file
53 an annual statement which shows] **possess** a surplus as regards policyholders
54 of less than [zero] **one hundred thousand** dollars, [or if the director has other
55 conclusive and credible evidence more recent than the last annual statement
56 indicating the surplus as regards policyholders of an association is less than zero
57 dollars,] the director may order such association to submit, within ninety days
58 following such order, a voluntary plan under which the association will restore
59 its surplus as regards policyholders to at least [zero] **one hundred thousand**
60 dollars. The director may monitor the performance of the association's plan and
61 may order modifications thereto, including assessments or rate or premium
62 increases, if the association fails to meet any targets proposed in such plan for
63 three consecutive quarters.

64 6. If the director issues an order in accordance with subsection 5 of this
65 section, the association may, in accordance with chapter 536, RSMo, file a petition
66 for review of such order. Any association subject to an order issued in accordance
67 with subsection 5 of this section shall be allowed a period of three years, or such
68 longer period as the director may allow, to accomplish its plan to restore its
69 surplus as regards policyholders to at least [zero] **one hundred thousand**
70 dollars. If at the end of the authorized period of time the association has failed
71 to restore its surplus to at least [zero] **one hundred thousand** dollars, or if the
72 director has ordered modifications of the voluntary plan and the association's
73 surplus has failed to increase within three consecutive quarters after such
74 modification, the director may allow an additional time for the implementation
75 of the voluntary plan or may exercise the director's powers to take charge of the
76 association as the director would a mutual casualty company pursuant to sections
77 375.1150 to 375.1246, RSMo, **and equitably assess current and former**
78 **members to restore the association's solvency.** Sections 375.1150 to
79 375.1246, RSMo, shall apply to associations licensed pursuant to sections 383.010
80 to 383.040 only after the conditions set forth in this section are met. When the
81 surplus as regards policyholders of an association subject to subsection 5 of this
82 section has been restored to at least [zero] **one hundred thousand** dollars, the
83 authority and jurisdiction of the director under subsections 5 and 6 of this section
84 shall terminate, but this subsection may again thereafter apply to such
85 association if the conditions set forth in subsection 5 of this section for its
86 application are again satisfied.

87 7. Any association licensed pursuant to the provisions of sections 383.010
88 to 383.040 shall place on file with the director, except as to excess liability risks

89 which by general custom are not written according to manual rates or rating
90 plans, a copy of every manual of classifications, rules, underwriting rules and
91 rates, every rating plan and every modification of the foregoing which it
92 uses. Filing with the director within ten days after such manuals, rating plans
93 or modifications thereof are effective shall be sufficient compliance with this
94 subsection. Any rates, rating plans, rules, classifications or systems in effect or
95 in use by an association on August 28, 1992, may continue to be used by the
96 association. Upon written application of a member of an association, stating his
97 or her reasons therefor, filed with the association, a rate in excess of that
98 provided by a filing otherwise applicable may be used by the association for that
99 member.

383.036. 1. No association first licensed under the provisions of
2 **sections 383.010 to 383.040 after August 28, 2008, may issue or renew**
3 **any insurance unless it maintains a ratio of its premiums written**
4 **during the most recent twelve consecutive months, less written**
5 **premiums ceded under any reinsurance agreement qualifying for credit**
6 **under section 375.246, RSMo, to its surplus as regards policyholders as**
7 **of the year ending December thirty-first of the immediately preceding**
8 **year, of no more than:**

9 (1) Six to one from the date it commences operation until the end
10 of its second full calendar year of operation;

11 (2) Five to one during its third full calendar year of operation;

12 (3) Four to one during its fourth full calendar year of operation;

13 and

14 (4) Three to one at all times after its fourth full calendar year of
15 operation.

16 2. No association licensed under the provisions of sections
17 383.010 to 383.040 on or before August 28, 2008, may issue or renew any
18 insurance unless it maintains a ratio of its premiums written during
19 the most recent twelve consecutive months, less written premiums
20 ceded under any reinsurance agreement qualifying for credit under
21 section 375.246, RSMo, to its surplus as regards policyholders of no
22 more than:

23 (1) Six to one from the effective date of this act until December
24 31, 2008;

25 (2) Five to one after December 31, 2008, and until December 31,
26 2009;

27 **(3) Four to one after December 31, 2009, and until December 31,**
28 **2010; and**

29 **(4) Three to one after December 31, 2010.**

30 **3. If any association is in violation of the applicable provisions**
31 **of subsection 1 or subsection 2 of this section as of the end of any**
32 **calendar year, the director of the department of insurance, financial**
33 **and professional registration shall order such association to submit,**
34 **within forty-five days following such order, a plan under which the**
35 **association will bring its ratio into compliance with the applicable**
36 **provisions of subsection 1 or subsection 2 of this section by the end of**
37 **the calendar year immediately following the calendar year regarding**
38 **which the association was first in violation.**

39 **4. Any association which has violated the applicable provisions**
40 **of subsection 1 or subsection 2 as of the end of two or more consecutive**
41 **calendar years shall be deemed in such condition that the further**
42 **transaction of business would be hazardous financially to its**
43 **policyholders, creditors, or the public, and the director may exercise**
44 **his or her powers to take charge of the association as he or she would**
45 **a mutual casualty company under sections 375.1150 to 375.1246, RSMo,**
46 **and equitably assess current and former members to restore the**
47 **association's solvency. Sections 375.1150 to 375.1246, RSMo, shall apply**
48 **to associations licensed under sections 383.010 to 383.040 only after the**
49 **conditions set forth in this section are met.**

 383.206. 1. Notwithstanding the provisions of sections 383.037 and
2 383.160, no insurer shall issue or sell in the state of Missouri a policy insuring
3 a health care provider, as defined in section 538.205, RSMo, for damages for
4 personal injury or death arising out of the rendering of or failure to render health
5 care services if the director finds, **after notice and opportunity for a hearing**
6 **and based upon competent and [compelling] substantial evidence on the**
7 **record as a whole**, that the base rates of such insurer are excessive,
8 inadequate, or unfairly discriminatory. A rate may be used by an insurer
9 immediately after it has been filed with the director, until or unless the director
10 has determined under this section that a rate is excessive, inadequate, or unfairly
11 discriminatory.

12 2. In making a determination under subsection 1 of this section, the
13 director of the department of insurance may use the following factors:

14 (1) Rates shall not be excessive or inadequate, nor shall they be unfairly

15 discriminatory;

16 (2) No rate shall be held to be excessive unless such rate is unreasonably
17 high for the insurance proved with respect to the classification to which such rate
18 is applicable;

19 (3) No rate shall be held to be inadequate unless such rate is
20 unreasonably low for the insurance provided with respect to the classification to
21 which such rate is applicable;

22 (4) To the extent Missouri loss experience is available, rates and projected
23 losses shall be based on Missouri loss experience and not the insurance company's
24 or the insurance industry's loss experiences in states other than Missouri unless
25 the failure to do so jeopardizes the financial stability of the insurer; provided
26 however, that loss experiences relating to the specific proposed insured occurring
27 outside the state of Missouri may be considered in allowing a surcharge to such
28 insured's premium rate;

29 (5) Investment income or investment losses of the insurance company for
30 the ten-year period prior to the request for rate approval may be considered in
31 reviewing rates. Investment income or investment losses for a period of less than
32 ten years shall not be considered in reviewing rates. Industrywide investment
33 income or investment losses for the ten-year period prior to the request for rate
34 approval may be considered for any insurance company that has not been
35 authorized to issue insurance for more than ten years;

36 (6) The locale in which the health care practice is occurring;

37 (7) Inflation;

38 (8) Reasonable administrative costs of the insurer;

39 (9) Reasonable costs of defense of claims against Missouri health care
40 providers;

41 (10) A reasonable rate of return on investment for the owners or
42 shareholders of the insurer when compared to other similar investments at the
43 time of the rate request; except that, such factor shall not be used to offset losses
44 in other states or in activities of the insurer other than the sale of policies of
45 insurance to Missouri health care providers; and

46 (11) Any other reasonable factors may be considered in the disapproval
47 of the rate request.

48 3. The director's determination under subsection 1 of this section of
49 whether a base rate is excessive, inadequate, or unfairly discriminatory may be
50 based on any subcategory or subspecialty of the health care industry that the
51 director determines to be reasonable.

52 4. If actuarially supported and included in a filed rate, rating plan, rule,
53 manual, or rating system, an insurer may charge an additional premium or grant
54 a discount rate to any health care provider based on criteria as it relates to a
55 specified insured health care provider or other specific health care providers
56 within the specific insured's employ or business entity. Such criteria may
57 include:

- 58 (1) Loss experiences;
- 59 (2) Training and experience;
- 60 (3) Number of employees of the insured entity;
- 61 (4) Availability of equipment, capital, or hospital privileges;
- 62 (5) Loss prevention measures taken by the insured;
- 63 (6) The number and extent of claims not resulting in losses;
- 64 (7) The specialty or subspecialty of the health care provider;
- 65 (8) Access to equipment and hospital privileges; and
- 66 (9) Any other reasonable criteria identified by the insurer and filed with
67 the department of insurance.

68 5. Supporting actuarial data shall be filed in support of a rate, rating
69 plan, or rating system filing, when requested by the director to determine
70 whether rates should be disapproved as excessive, inadequate, or unfairly
71 discriminatory, whether or not the insurer has begun using the rate.

72 6. The director of the department of insurance shall promulgate rules for
73 the administration and enforcement of this section. Any rule or portion of a rule,
74 as that term is defined in section 536.010, RSMo, that is created under the
75 authority delegated in this section shall become effective only if it complies with
76 and is subject to all of the provisions of chapter 536, RSMo, and, if applicable,
77 section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
78 and if any of the powers vested with the general assembly pursuant to chapter
79 536, RSMo, to review, to delay the effective date, or to disapprove and annul a
80 rule are subsequently held unconstitutional, then the grant of rulemaking
81 authority and any rule proposed or adopted after August 28, 2006, shall be
82 invalid and void.

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